



**FEDERAL COMMUNICATIONS COMMISSION**  
**ENFORCEMENT BUREAU**  
**INVESTIGATIONS AND HEARINGS DIVISION**  
445 12th STREET, S.W. ■ WASHINGTON, D.C. 20554  
TEL: (202) 418-1420 ■ FAX: (202) 418-2080

**FACSIMILE TRANSMISSION**

DATE:

1/28/08

TO:

KETV

Fax number:

402-978-8931

Telephone number:

202-418-2394

FROM:

Ben Bar tolome

Telephone number:

202-418-2394

**IMPORTANT:** This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is confidential, privileged, and/or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

**MESSAGE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TOTAL NUMBER OF PAGES IN THIS FAX :** \_\_\_\_\_ (including this cover page)

IF THERE IS A PROBLEM WITH THIS TRANSMISSION, PLEASE CALL (202) 418-1420.

## Federal Communications Commission

FCC 08-25

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Complaints Against Various Television Licensees  
Concerning Their February 25, 2003 Broadcast of  
the Program "NYPD Blue"

File Nos. EB-03-IH-0122 and  
EB-03-IH-0353<sup>1</sup>

### NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 25, 2008

Released: January 25, 2008

By the Commission: Commissioner Tate issuing a separate statement.

#### I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's rules,<sup>2</sup> we find that the ABC Television Network ("ABC") affiliated stations and ABC owned-and-operated stations listed in the Attachment to this NAL aired material that apparently violates the federal restrictions regarding the broadcast of indecent material.<sup>3</sup> Specifically, during the February 25, 2003 episode of the ABC program "NYPD Blue," aired at 9:00 p.m. Central Standard Time and Mountain Standard Time, these licensees each broadcast adult female nudity. Based upon our review of the facts and circumstances of this case, we conclude that each licensee listed in the Attachment is apparently liable for a monetary forfeiture in the amount of \$27,500 per station for broadcasting indecent material in apparent violation of 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules.

#### II. BACKGROUND

2. Section 1464 of Title 18, United States Code, prohibits the broadcast of obscene, indecent, or profane programming.<sup>4</sup> The FCC rules implementing that statute, a subsequent statute establishing a "safe harbor" during certain hours, and the Act prohibit radio and television stations from broadcasting obscene material at any time and indecent material between 6 a.m. and 10 p.m.<sup>5</sup>

3. *Indecency Analysis.* Enforcement of the provisions restricting the broadcast of indecent, obscene, or profane material is an important component of the Commission's overall responsibility over broadcast radio and television operations. At the same time, however, the Commission must be mindful of the First Amendment to the United States Constitution and Section 326 of the Act, which prohibit the

<sup>1</sup> The NAL/Acct. No. and FRN number for each licensee subject to this Notice are enumerated in the Attachment.

<sup>2</sup> See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>3</sup> See 18 U.S.C. § 1464; 47 C.F.R. § 73.3999.

<sup>4</sup> See 18 U.S.C. § 1464.

<sup>5</sup> See 47 C.F.R. § 73.3999.

## Federal Communications Commission

FCC 08-25

Commission from censoring program material or interfering with broadcasters' free speech rights.<sup>6</sup> As such, in making indecency determinations, the Commission proceeds cautiously and with appropriate restraint.<sup>7</sup>

4. The Commission defines indecent speech as material that, in context, depicts or describes sexual or excretory activities or organs in terms patently offensive as measured by contemporary community standards for the broadcast medium.<sup>8</sup>

Indecency findings involve at least two fundamental determinations. First, the material alleged to be indecent must fall within the subject matter scope of our indecency definition—that is, the material must describe or depict sexual or excretory organs or activities. . . . Second, the broadcast must be *patently offensive* as measured by contemporary community standards for the broadcast medium.<sup>9</sup>

5. In our assessment of whether broadcast material is patently offensive, “the *full context* in which the material appeared is critically important.”<sup>10</sup> Three principal factors are significant to this contextual analysis: (1) the explicitness or graphic nature of the material; (2) whether the material dwells on or repeats at length depictions or descriptions of sexual or excretory organs or activities; and (3) whether the material panders to, titillates, or shocks the audience.<sup>11</sup> In examining these three factors, we

<sup>6</sup> See U.S. CONST., amend. I; 47 U.S.C. § 326. See also *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813-15 (2000).

<sup>7</sup> See *Action for Children's Television v. FCC*, 852 F.2d 1332, 1344, 1340 n. 14 (1988) (“ACT I”) (stating that “[b]roadcast material that is indecent but not obscene is protected by the First Amendment; the FCC may regulate such material only with due respect for the high value our Constitution places on freedom and choice in what people may say and hear,” and that any “potential chilling effect of the FCC’s generic definition of indecency will be tempered by the Commission’s restrained enforcement policy.”).

<sup>8</sup> See *Infinity Broadcasting Corporation of Pennsylvania*, Memorandum Opinion and Order, 2 FCC Rcd 2705 (1987) (subsequent history omitted) (citing *Pacifica Foundation*, Memorandum Opinion and Order, 56 FCC 2d 94, 98 (1975), *aff’d sub nom. FCC v. Pacifica Foundation*, 438 U.S. 726 (1978) (“*Pacifica*”).

<sup>9</sup> *Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency*, Policy Statement, 16 FCC Rcd 7999, 8002 ¶¶ 7-8 (2001) (“*Indecency Policy Statement*”) (emphasis in original). In applying the “community standards for the broadcast medium” criterion, the Commission has stated:

The determination as to whether certain programming is patently offensive is not a local one and does not encompass any particular geographic area. Rather, the standard is that of an average broadcast viewer or listener and not the sensibilities of any individual complainant.

*WPBN/WTOM License Subsidiary, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 1838, 1841 ¶ 10 (2000) (“*WPBN/WTOM MO&O*”). The Commission’s interpretation of the term “contemporary community standards” flows from its analysis of the definition of that term set forth in the Supreme Court’s decision in *Hamling v. United States*, 418 U.S. 87 (1974), *reh’g denied*, 419 U.S. 885 (1974). In *Infinity Broadcasting Corporation of Pennsylvania (WYSP(FM))*, Memorandum Opinion and Order, 3 FCC Rcd 930 (1987) (subsequent history omitted), the Commission observed that in *Hamling*, which involved obscenity, “the Court explained that the purpose of ‘contemporary community standards’ was to ensure that material is judged neither on the basis of a decisionmaker’s personal opinion, nor by its effect on a particularly sensitive or insensitive person or group.” *Id.* at 933 (citing 418 U.S. at 107). The Commission also relied on the fact that the Court in *Hamling* indicated that decisionmakers need not use any precise geographic area in evaluating material. *Id.* at 933 (citing 418 U.S. at 104-05). Consistent with *Hamling*, the Commission concluded that its evaluation of allegedly indecent material is “not one based on a local standard, but one based on a broader standard for broadcasting generally.” *Id.* at 933.

<sup>10</sup> *Indecency Policy Statement*, 16 FCC Rcd at 8002 ¶ 9 (emphasis in original).

<sup>11</sup> See *id.* at 8002-15 ¶¶ 8-23.

## Federal Communications Commission

FCC 08-25

must weigh and balance them on a case-by-case basis to determine whether the broadcast material is patently offensive because "[e]ach indecency case presents its own particular mix of these, and possibly, other factors."<sup>12</sup> In particular cases, one or two of the factors may outweigh the others, either rendering the broadcast material patently offensive and consequently indecent,<sup>13</sup> or, alternatively, removing the broadcast material from the realm of indecency.

6. **Forfeiture Calculations.** This NAL is issued pursuant to Section 503(b)(1) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission or to have violated Section 1464 of Title 18, United States Code, shall be liable to the United States for a forfeiture penalty.<sup>14</sup> Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.<sup>15</sup> The legislative history to Section 312(f)(1) clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>16</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>17</sup>

7. The Commission's *Forfeiture Policy Statement* establishes a base forfeiture amount of \$7,000 for the transmission of indecent or obscene materials.<sup>18</sup> The *Forfeiture Policy Statement* also specifies that the Commission shall adjust a forfeiture based upon consideration of the factors enumerated in Section 503(b)(2)(D) of the Act, such as "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>19</sup> The statutory maximum forfeiture amount for violations that occurred in February 2003 is \$27,500.<sup>20</sup>

### III. DISCUSSION

8. **The Programming.** The Commission received numerous complaints alleging that certain affiliates of ABC and ABC owned-and-operated stations, as listed in the Attachment, broadcast indecent material during the February 25, 2003 episode of the ABC program "NYPD Blue" at 9:00 p.m. in the Central and Mountain Standard Time Zones.

9. The complaints refer to a scene at the beginning of the program, during which a woman and a boy, who appears to be about seven or eight years old, are involved in an incident that includes adult female nudity. As confirmed by a tape of the program provided by ABC, during the scene in

<sup>12</sup> *Id.* at 8003 ¶ 10.

<sup>13</sup> See *id.* at 8009 ¶ 19 (citing *Tempe Radio, Inc. (KUPD-FM)*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 21828 (Mass Media Bur. 1997) (forfeiture paid), and *EZ New Orleans, Inc. (WEZB-FM)*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 4147 (Mass Media Bur. 1997) (forfeiture paid) (finding that the extremely graphic or explicit nature of references to sex with children outweighed the fleeting nature of the references).

<sup>14</sup> See 47 U.S.C. § 503(b)(1)(B) & D. See also 47 C.F.R. 1.80(a)(1).

<sup>15</sup> See 47 U.S.C. § 312(f)(1).

<sup>16</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>17</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>18</sup> See *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("Forfeiture Policy Statement"); see also 47 C.F.R. § 1.80(b).

<sup>19</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01 ¶ 27.

<sup>20</sup> The statutory maximum amount for violations occurring after November 13, 2000, and before September 7, 2004, is \$27,500. See 65 FR 60868-01 (2000); see also *Amendment of Section 1.80 of the Commission's Rules*, Order, 19 FCC Rcd 10945, 10946 ¶ 6 (2004) (amending rules to increase maximum penalties due to inflation since last adjustment of penalty rates).

## Federal Communications Commission

FCC 08-25

question, a woman wearing a robe is shown entering a bathroom, closing the door, and then briefly looking at herself in a mirror hanging above a sink. The camera then shows her crossing the room, turning on the shower, and returning to the mirror. With her back to the camera, she removes her robe, thereby revealing the side of one of her breasts and a full view of her back. The camera shot includes a full view of her buttocks and her upper legs as she leans across the sink to hang up her robe. The camera then tracks her, in profile, as she walks from the mirror back toward the shower. Only a small portion of the side of one of her breasts is visible. Her pubic area is not visible, but her buttocks are visible from the side.

10. The scene shifts to a shot of a young boy lying in bed, kicking back his bed covers, getting up, and then walking toward the bathroom. The camera cuts back to the woman, who is now shown standing naked in front of the shower, her back to the camera. The frame consists initially of a full shot of her naked from the back, from the top of her head to her waist; the camera then pans down to a shot of her buttocks, lingers for a moment, and then pans up her back. The camera then shifts back to a shot of the boy opening the bathroom door. As he opens the door, the woman, who is now standing in front of the mirror with her back to the door, gasps, quickly turns to face the boy, and freezes momentarily. The camera initially focuses on the woman's face but then cuts to a shot taken from behind and through her legs, which serve to frame the boy's face as he looks at her with a somewhat startled expression. The camera then jumps to a front view of the woman's upper torso; a full view of her breasts is obscured, however, by a silhouette of the boy's head and ears. After the boy backs out of the bathroom and shuts the door, the camera shows the woman facing the door, with one arm and hand covering her breasts and the other hand covering her pubic area. The scene ends with the boy's voice, heard through the closed door, saying "sorry," and the woman while looking embarrassed, responds, "It's okay. No problem." The complainants contend that such material is indecent and request that the Commission impose sanctions against the licensees responsible for broadcasting this material.

11. **Indecency Analysis.** As an initial matter, we find that the programming at issue is within the scope of our indecency definition because it depicts sexual organs and excretory organs – specifically an adult woman's buttocks.<sup>21</sup> Although ABC argues, without citing any authority, that the buttocks are not a sexual organ,<sup>22</sup> we reject this argument, which runs counter to both case law<sup>23</sup> and common sense.

12. We also find that the material is, in the context presented here, patently offensive as measured by contemporary community standards for the broadcast medium. Turning to the first principal factor in our contextual analysis, the scene contains explicit and graphic depictions of sexual organs. The scene depicts multiple, close-range views of an adult woman's naked buttocks. In this respect, this case is similar to other cases in which we have held depictions of nudity to be graphic and explicit.<sup>24</sup>

<sup>21</sup> See *Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, Notices of Apparent Liability and Memorandum Opinion and Order, 21 FCC Rcd 2664, 2681 ¶ 62, vacated in part on other grounds, 21 FCC Rcd 13299 (2006) (subsequent history omitted) ("2006 Indecency Omnibus Order").

<sup>22</sup> See *Response* at 7.

<sup>23</sup> See, e.g., *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000) (Supreme Court did not disturb a city's indecency ordinance prohibiting public nudity, where the buttocks was listed among other sexual organs/body parts subject to the ordinance's ban on nudity); *Loce v. Time Warner Entertainment Advance/Newhouse Partnership*, 191 F.3d 256, 269 (2d. Cir. 1999) (upholding state district court's determination that Time Warner's decision to not transmit certain cable programming that it reasonably believed indecent (some of which included "close-up shots of unclothed breasts and buttocks") did not run afoul of the Constitution).

<sup>24</sup> See, e.g., *Complaints Against Various Television Licensees Concerning Their February 1, 2004, Broadcast of the Super Bowl XXXVIII Halftime Show*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 19230, 19235 ¶ 13 (2004) ("Super Bowl NAL") (finding that a broadcast of a performer's exposed breast was graphic and explicit), affirmed, Forfeiture Order, 21 FCC Rcd 2760 (2006), affirmed, Order on Reconsideration, 21 FCC Rcd 6653 (2006), appeal pending. See also *Young Broadcasting of San Francisco, Inc.*, Notice of Apparent Liability for Forfeiture, (continued....)

## Federal Communications Commission

FCC 08-25

13. Turning to the second factor in our contextual analysis, although not dispositive, we find that the broadcast dwells on and repeats the sexual material. We have held that repetition and persistent focus on sexual or excretory material is a relevant factor in evaluating the potential offensiveness of broadcasts.<sup>25</sup> Here, the scene in question revolves around the woman's nudity and includes several shots of her naked buttocks. The material is thus dwelled upon and repeated.

14. With respect to the third factor, we find that the scene's depiction of adult female nudity, particularly the repeated shots of a woman's naked buttocks, is titillating and shocking. ABC concedes that the scene included back and side nudity, but contends that it was "not presented in a lewd, prurient, pandering, or titillating way."<sup>26</sup> ABC asserts that the purpose of the scene was to "illustrate[] the complexity and awkwardness involved when a single parent brings a new romantic partner into his or her life," and that the nudity was not included to depict an attempted seduction or a sexual response from the young boy.<sup>27</sup> Even accepting ABC's assertions as to the purpose of the scene, they do not alter our conclusion that the scene's depiction of adult female nudity is titillating and shocking. As discussed above, the scene includes multiple, close-up views of the woman's nude buttocks, with the camera at one point panning down her naked back for a lingering shot of her buttocks. The partial views of the woman's breasts, as well as the camera shots of the boy's shocked face from between her legs and of her upper torso from behind his head, are also relevant contextual factors that serve to heighten the titillating and shocking nature of the scene. Thus, we find that the scene in question, which included repeated and lingering images of a woman naked from the back, with close-up views of her naked buttocks, presented adult female nudity in a manner that shocks and titillates viewers.

15. Finally, we reject ABC's argument that, because of the "modest number of complaints" the network received,<sup>28</sup> and the program's generally high ratings,<sup>29</sup> the contemporary community standards of the viewing community embrace, rather than reject, this particular material. As a matter of clarification, while ABC may not have received many complaints about the program, the Commission received numerous complaints, including thousands of letters from members of various citizen advocacy groups. The Commission's indecency determinations are not governed by the number of complaints received about a given program, however, nor do they turn on whether the program or the station that broadcast it happens to be popular in its particular market.<sup>30</sup> Indeed, with respect to the latter factor, the fact that the program is watched by a significant number of viewers serves to increase the likelihood that children were among those who may have seen the indecent broadcasts, thereby increasing the public harm from the licensees' misconduct.

(...continued from previous page)

19 FCC Rcd 1751, 1755 ¶ 11 (2004) ("*Young Broadcasting NAL*") (finding that a broadcast of a performer's exposed penis was graphic and explicit), *NAL response pending*.

<sup>25</sup> See *Indecency Policy Statement*, 16 FCC Rcd at 8008 ¶ 17 (citing cases); see also *Complaints Against Various Licensees Regarding Their Broadcast of the Fox Television Network Program "Married By America" on April 7, 2003*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 20191, 20195 ¶ 11 (2004) ("*Married By America NAL*") (*NAL response pending*); *Entercom Seattle License, LLC*, Order on Review, 19 FCC Rcd 9069, 9073-74 ¶ 13 (2004), *petition for recon. pending*.

<sup>26</sup> See Response at 9.

<sup>27</sup> See *id.* at 3-4, 9-11.

<sup>28</sup> See *id.* at 9, n.7.

<sup>29</sup> See *id.* at 9.

<sup>30</sup> See *The Rusk Corporation*, Notice of Apparent Liability for Forfeiture, 8 FCC Rcd 3228, 3229 (1993) (forfeiture paid).

## Federal Communications Commission

FCC 08-25

16. In sum, although the broadcast of nudity is not necessarily indecent in all contexts,<sup>31</sup> taking into account the three principal factors in our contextual analysis, we conclude that the broadcast of the material at issue here is apparently indecent. As reviewed above, the material in this episode was explicit, dwelled upon, and shocking, pandering and titillating. The complained-of material was broadcast by the licensees listed in the Attachment within the 6 a.m. to 10 p.m. time frame relevant to an indecency determination under Section 73.3999 of the Commission's rules.<sup>32</sup> Although ABC included in the program a warning that "this police drama contains adult language and partial nudity,"<sup>33</sup> the Supreme Court has ruled that such warnings are not necessarily effective because the audience is constantly changing stations.<sup>34</sup> Therefore, notwithstanding the warning, there is a reasonable risk that children may have been in the audience and the broadcast is legally actionable.<sup>35</sup>

17. **Forfeiture Calculation.** We find that the ABC affiliates and ABC owned-and-operated stations listed in the Attachment consciously and deliberately broadcast the programming at issue here. Accordingly, we find that each broadcast in apparent violation of 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999 was willful within the meaning of Section 503(b)(1) of the Act, and subject to forfeiture.

18. We therefore turn to the proposed forfeiture amount, which is based on the factors enumerated in Section 503(b)(2)(D) of the Act and the facts and circumstances of this case. For the following reasons, we find that \$27,500 is an appropriate proposed forfeiture for the material found to be apparently indecent in this case. The scene depicts a nude woman with her buttocks entirely exposed. The material was prerecorded, and ABC or its affiliates could have edited or declined the content prior to broadcast.<sup>36</sup> Although ABC included a warning, we find that a lower forfeiture is not warranted here in light of all the circumstances surrounding the apparent violation, including the shocking and titillating nature of the scene. On balance and in light of all of the circumstances, we find that a \$27,500 forfeiture amount for each station would appropriately punish and deter the apparent violation in this case. Therefore, we find that each licensee listed in the Attachment is apparently liable for a proposed forfeiture of \$27,500 for each station that broadcast the February 25, 2003, episode of "NYPD Blue" prior to 10 p.m.<sup>37</sup>

19. Although we are informed that other stations not mentioned in any complaint also broadcast the complained-of episode of "NYPD Blue," we propose forfeitures against only those licensees whose broadcasts of the material between 6 a.m. and 10 p.m. were actually the subject of viewer complaints to the Commission. This result is consistent with the approach set forth by the Commission in

<sup>31</sup> Compare *WPBN/WTOM MO&O*, 15 FCC Rcd at 1840-41 ¶¶ 8-13 (finding that nudity in the broadcast of the movie "Schindler's List" was not indecent because it was not patently offensive in context) with *Young Broadcasting NAL*, 19 FCC Rcd at 1756, ¶ 14 (finding that exposure of male genitalia was patently offensive because it was gratuitous and apparently intended to shock and titillate the audience).

<sup>32</sup> See 47 C.F.R. § 73.3999.

<sup>33</sup> Response at 10-11.

<sup>34</sup> See *Pacifica*, 438 U.S. at 748-49.

<sup>35</sup> See *Action for Children's Television v. FCC*, 58 F.3d 654, 660-63 (D.C. Cir. 1995) (*en banc*), cert. denied, 516 U.S. 1072 (1996).

<sup>36</sup> See *Married By America NAL*, 19 FCC Rcd at 20196 ¶ 16.

<sup>37</sup> The fact that the stations in question may not have originated the programming is irrelevant to whether there is an indecency violation. See *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates*, Notice of Proposed Rulemaking, 10 FCC Rcd 11951, 11961, ¶ 20 (1995) (internal quotation omitted) ("We conclude that a licensee is not fulfilling his obligations to operate in the public interest, and is not operating in accordance with the express requirements of the Communications Act, if he agrees to accept programs on any basis other than his own reasonable decision that the programs are satisfactory.").

## Federal Communications Commission

FCC 08-25

its most recent indecency orders.<sup>38</sup> As indicated in those orders, our commitment to an appropriately restrained enforcement policy justifies this more limited approach toward the imposition of forfeiture penalties. Accordingly, we propose forfeitures as set forth in the Attachment.

#### IV. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's rules, that the licensees of the stations that are affiliates of the ABC Television Network and of the stations owned and operated by ABC, as enumerated in the Attachment, are hereby NOTIFIED of their APPARENT LIABILITY FOR FORFEITURE in the amount of \$27,500 per station for willfully violating 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules by their broadcast of the program "NYPD Blue" on February 25, 2003.

21. IT IS FURTHER ORDERED that a copies of this NAL shall be sent by Certified Mail, Return Receipt Requested, to John W. Zucker, Senior Vice President, Law & Regulation, ABC Inc., 77 West 66<sup>th</sup> Street, New York, New York 20024, and to Susan L. Fox, Vice President, Government Relations, The Walt Disney Company, 1150 17<sup>th</sup> Street, N.W., Suite 400, Washington, D.C. 20036, and to the licensees of the stations listed in the Attachment, at their respective addresses noted therein.

22. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that not later than February 11, 2008, each licensee identified in the Attachment SHALL PAY the full amount of its proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of their proposed forfeiture.

23. Payment of the forfeitures must be made by check or similar instrument, payable to the order of the Federal Communications Commission. Payments must include the relevant NAL/Acct. No. and FRN No. referenced in the Attachment. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

24. The responses, if any, must be mailed to Benigno E. Bartolome, Acting Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-C330, Washington D.C. 20554, and MUST INCLUDE the relevant NAL/Acct. No. referenced for each proposed forfeiture in the Attachment hereto.

25. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

26. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Associate Managing Director - Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>39</sup>

<sup>38</sup> See 2006 Indecency Omnibus Order, 21 FCC Rcd at 2673 ¶ 32.

<sup>39</sup> See 47 C.F.R. § 1.1914.



**Federal Communications Commission****FCC 08-25**

27. Accordingly, IT IS ORDERED that the complaints in this *NAL* proceeding ARE GRANTED to the extent indicated herein, AND ARE OTHERWISE DENIED, and the complaint proceeding IS HEREBY TERMINATED.<sup>40</sup>

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

<sup>40</sup> Consistent with Section 503(b) of the Act and consistent Commission practice, for the purposes of the forfeiture proceeding initiated by this *NAL*, the only parties to such proceeding will be the licensees specified in the Attachment.

## Federal Communications Commission

FCC 08-25

ATTACHMENTProposed Forfeitures For February 25, 2003  
Broadcasts Of "NYPD Blue"

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Sign and Community of License	Facility ID Nos.	Proposed Forfeiture Amount
Cedar Rapids Television Company, 2 <sup>nd</sup> Avenue at 5 <sup>th</sup> Street, NE, Cedar Rapids, IA 52401	0002589489	200832080013	KCRG-TV Cedar Rapids, IA	9719	\$27,500
Centex Television Limited Partnership, P. O. Box 2522, Waco, TX 76702	0001675719	200832080014	KXXV(TV) Waco, TX	9781	\$27,500
Channel 12 of Beaumont, Inc., 525 Interstate Highway, 10 South, Beaumont, TX 77701	0006587307	200832080015	KBMT(TV) Beaumont, TX	10150	\$27,500
Citadel Communications, LLC, 44 Pondfield Road, Suite 12, Bronxville, NY 10708	0003757481	200832080016	KLKN(TV) Lincoln, NE	11264	\$27,500
KLTV/KTRE License Subsidiary, LLC, 201 Monroe Street, RSA Tower 20 <sup>th</sup> Floor, Montgomery, AL 36104	0015798341	200832080017	KLTV(TV) Tyler, TX	68540	\$27,500
Duhamel Broadcasting Enterprises, 518 St. Joseph Street,, Rapid City, SD 57701	0002433340	200832080018	KOTA-TV Rapid City, SD	17688	\$27,500
Forum Communications Company, 301 8 <sup>th</sup> Street South, P. O. Box 2466, Fargo, ND 58103	0002480085	200832080019	WDAY-TV Fargo, ND	22129	\$27,500
Gray Television Licensee Corp., 1500 North West Street, Wichita, KS 67203	0002746022	200832080020	KAKE-TV Wichita, KS	65522	\$27,500
Gray Television Licensee, Inc., P. O. Box 10, Wichita, KS 67201	0002746022	200832080021	KLBY(TV) Colby, KS	65523	\$27,500

## Federal Communications Commission

FCC 08-25

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Sign and Community of License	Facility ID Nos.	Proposed Forfeiture Amount
KSTP-TV, LLC, 3415 University Avenue, West, St. Paul, MN 55114- 2099	0009769621	200832080022	KSTP-TV St. Paul, MN	28010	\$27,500
KATC Communications, Inc., 1103 Eraste Landry Road, Lafayette, LA 70506	0003822285	200832080023	KATC(TV) Lafayette, LA	33471	\$27,500
KATV, LLC, P. O. Box 77, Little Rock, AR 72203	0001694462	200832080024	KATV(TV) Little Rock, AR	33543	\$27,500
KDNL Licensee, LLC, c/o Pillsbury Winthrop Shaw Pittman, LLP, 2300 N Street, NW, Washington, DC 20037-1128	0002144459	200832080025	KDNL-TV St. Louis, MO	56524	\$27,500
KETV Hearst- Argyle Television, Inc., c/o Brooks, Pierce, et al, P. O. Box 1800, Raleigh, NC 27602	0003799855	200832080026	KETV(TV) Omaha, NE	53903	\$27,500
KFBB Corporation, L.L.C., c/o Wooster Republican Printing Company, 40 S Linden Ave, Alliance, OH 44601-2447	0011094281	200832080027	KFBB-TV Great Falls, MT	34412	\$27,500
KHBS Hearst- Argyle Television, Inc., c/o Brooks, Pierce, et al, P. O. Box 1800, Raleigh, NC 27602	0001587088	200832080028	KHOG-TV Fayetteville, AR	60354	\$27,500
KMBC Hearst- Argyle Television, Inc., c/o Brooks, Pierce, et al, P.O. Box 1800, Raleigh, NC 27602	0001675974	200832080029	KMBC-TV Kansas City, MO	65686	\$27,500
KSWO Television Company, Inc., P. O. Box 708, Lawton, OK 73502	0001699248	200832080030	KSWO-TV Lawton, OK	35645	\$27,500

## Federal Communications Commission

FCC 08-25

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Sign and Community of License	Facility ID Nos.	Proposed Forfeiture Amount
KTBS, Inc., P. O. Box 44227, Shreveport, LA 71104	0003727419	200832080031	KTBS-TV Shreveport, LA	35652	\$27,500
KTRK Television, Inc., 77 W. 66 <sup>th</sup> Street, Floor 16, New York, NY 10023-6201	0012480109	200832080032	KTRK-TV Houston, TX	35675	\$27,500
KTUL, LLC, 3333 S. 29 <sup>th</sup> West Avenue, Tulsa, OK 74107	0001694413	200832080033	KTUL(TV) Tulsa, OK	35685	\$27,500
KVUE Television, Inc., 400 South Record Street, Dallas, TX 75202	0001545581	200832080034	KVUE(TV) Austin, TX	35867	\$27,500
Louisiana Television Broadcasting, LLC, P. O. Box 2906, Baton Rouge, LA 70821	0001714344	200832080035	WBRZ-TV Baton Rouge, LA	38616	\$27,500
McGraw-Hill Broadcasting Company, 123 Speer Boulevard, Denver, CO 80203	0003476827	200832080036	KMGH-TV Denver, CO	40875	\$27,500
Media General Communication Holdings, LLC., 333 E. Franklin Street, Richmond, VA 23219-2213	0015751217	200832080037	WMBB(TV) Panama City, FL	66398	\$27,500
Mission Broadcasting, Inc., 544 Red Rock Drive, Wadsworth, OH 44281	0004284899	200832080038	KODE-TV Joplin, MO	18283	\$27,500
Mississippi Broadcasting Partners, c/o Anne Swanson, Dow Lohnes PLLC, 1200 New Hampshire Avenue, NW, Suite 800, Washington DC 20036-6802	0003828753	200832080039	WABG-TV Greenwood, MS	43203	\$27,500
Nexstar Broadcasting, Inc., 909 Lake Carolyn Parkway, Suite 1450, Irving, TX 75039	0009961889	200832080040	WDHN(TV) Dothan, AL	43846	\$27,500

## Federal Communications Commission

FCC 08-25

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Sign and Community of License	Facility ID Nos.	Proposed Forfeiture Amount
Local TV Illinois License, LLC, 1717 Dixie Highway, Suite 650, Ft. Wright, KY 41011	0016216046	200832080041	WQAD-TV Moline, IL	73319	\$27,500
Nexstar Broadcasting, Inc., 909 Lake Carolyn Parkway, Suite 1450, Irving, TX 75039	0009961889	200832080042	KQTV(TV) St. Joseph, MO	20427	\$27,500
Northeast Kansas Broadcast Service, Inc., 2121 S.W. Chelsea Avenue, Topeka, KS 66604	0013446273	200832080043	KTKA-TV Topeka, KS	49397	\$27,500
NPG of Texas, L.P., 4140 Rio Bravo, El Paso, TX 79902	0006548028	200832080044	KVIA-TV El Paso, TX	49832	\$27,500
Ohio/Oklahoma Hearst-Argyle Television, c/o Brooks Pierce et al, P. O. Box 1800, Raleigh, NC 27602	0001587609	200832080045	KOCO-TV Oklahoma City, OK	12508	\$27,500
Piedmont Television of Huntsville License, LLC, c/o Piedmont Television Holdings LLC, 7621 Little Avenue, Suite 506, Charlotte, NC 28226	0004063483	200832080046	WAAY-TV Huntsville, AL  KSPR(TV) Springfield, MO	57292  35630	\$55,000
Pollack/Belz Communications Co., Inc., 5500 Poplar Lane, Memphis, TN 38119-3716	0006096200	200832080047	KLAX-TV Alexandria, LA	52907	\$27,500
Post-Newsweek Stations, San Antonio, Inc., c/o Post-Newsweek Stations, 550 West Lafayette Boulevard, Detroit, MI 48226-3140	0002149953	200832080048	KSAT-TV San Antonio, TX	53118	\$27,500

## Federal Communications Commission

FCC 08-25

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Sign and Community of License	Facility ID Nos.	Proposed Forfeiture Amount
Scripps Howard Broadcasting Co., 312 Walnut Street, Cincinnati, OH 45202	0012487609	200832080049	KNXV-TV Phoenix, AZ	59440	\$27,500
Southern Broadcasting, Inc., P. O. Box 1645, Tupelo, MS 38802	0005411632	200832080050	WKDH(TV) Houston, MS	83310	\$27,500
Tennessee Broadcasting Partners, c/o Russell Schwartz, One Television Place, Charlotte, NC 28205	0003828696	200832080051	WBBJ-TV Jackson, TN	65204	\$27,500
Tribune Television New Orleans, Inc., 1 Galleria Boulevard, Suite 850, Metairie, LA 70001	0002847564	200832080052	WGNO(TV) New Orleans, LA	72119	\$27,500
WAPT Hearst-Argyle TV, Inc., (CA Corp.), P. O. Box 1800, Raleigh, NC 27602	0005008867	200832080053	WAPT(TV) Jackson, MS	49712	\$27,500
WDIO-TV, LLC, 3415 University Avenue West, St. Paul, MN 55114-2099	0004199139	200832080054	WDIO-TV Duluth, MN	71338	\$27,500
WEAR Licensee, LLC, Pillsbury, Winthrop, Shaw, Pittman, LLP, 2300 N Street, NW, Washington, DC 20037-1128	0004970935	200832080055	WEAR-TV Pensacola, FL	71363	\$27,500
WFAA-TV, Inc., 400 South Record Street, Dallas, TX 75202	0001651496	200832080056	WFAA-TV Dallas, TX	72054	\$27,500
WISN Hearst-Argyle TV, Inc. (CA Corp.), P. O. Box 1800, Raleigh, NC 27602	0003792603	200832080057	WISN-TV Milwaukee, WI	65680	\$27,500
WKOW Television, Inc., P. O. Box 909, Quincy, IL 62306	0004383683	200832080058	WKOW-TV Madison, WI	64545	\$27,500
WKRN, G.P., c/o Brooks Pierce et al, P. O. Box 1800, Raleigh, NC 27602	0005015037	200832080059	WKRN-TV Nashville, TN	73188	\$27,500

## Federal Communications Commission

FCC 08-25

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Sign and Community of License	Facility ID Nos.	Proposed Forfeiture Amount
WLS Television, Inc., 77 W. 66 <sup>th</sup> Street, Floor 16, New York, NY 10023-6201	0003471315	200832080060	WLS-TV Chicago, IL	73226	\$27,500
WSIL-TV, Inc., 5009 South Hulen, Suite 101, Fort Worth, TX 76132-1989	0002808137	200832080061	WSIL-TV Harrisburg, IL	73999	\$27,500
WXOW-WQOW Television, Inc., P.O. Box 909, Quincy, IL 62306	0005012216	200832080062	WXOW-TV La Crosse, WI	64549	\$27,500
Young Broadcasting of Green Bay, Inc., c/o Brooks Pierce et al, P. O. Box 1800, Raleigh, NC 27602	0004994984	200832080063	WBAY-TV Green Bay, WI	74417	\$27,500

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE**

Our action today should serve as a reminder to all broadcasters that Congress and American families continue to be concerned about protecting children from harmful material and that the FCC will enforce the laws of the land vigilantly. In fact, pursuant to the Broadcast Decency Act of 2005, Congress increased the maximum authorized fines ten-fold. The law is simple. If a broadcaster makes the decision to show indecent programming, it must air between the hours of 10 p.m. and 6 a.m. This is neither difficult to understand nor burdensome to implement.





**FEDERAL COMMUNICATIONS COMMISSION**  
**ENFORCEMENT BUREAU**  
**INVESTIGATIONS AND HEARINGS DIVISION**  
445 12th STREET, S.W. □ WASHINGTON, D.C. 20554  
TEL: (202) 418-1420 □ FAX: (202) 418-2080

**FACSIMILE TRANSMISSION**

**DATE:** JANUARY 31, 2008

**TO:** KETV

Fax number: 402-978-8931

Telephone number: 402-418-2394

**FROM:** Ben Bartolome

Telephone number: (202) 418-1420

**IMPORTANT:** This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is confidential, privileged, and/or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

**MESSAGE:**

---

---

---

---

---

---

---

---

**TOTAL NUMBER OF PAGES IN THIS FAX :** \_\_\_\_\_ (including this cover page)

IF THERE IS A PROBLEM WITH THIS TRANSMISSION, PLEASE CALL (202) 418-1420.

Attached please find an Erratum to FCC 08-25. The Erratum serves to correct specific information in the Attachment to the Notice of Apparent Liability (NAL) released Friday, January 25, 2008, a copy of which you should already have by certified mail, fax, and/or email. There are no other changes to the copy you originally received except for the specific items in the enclosed Erratum. Also enclosed is a corrected version of the NAL. Please discard the original version received and maintain the enclosed version for your records.

If any questions, please contact Ben Bartolome at (202) 418-2394.

# Federal Communications Commission

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )

Complaints Against Various Television Licensees )  
Concerning Their February 25, 2003 Broadcast of )  
the Program "NYPD Blue" )

File Nos. EB-03-IH-0122 and  
EB-03-IH-0353

## ERRATUM

Released: January 31, 2008

By the Acting Chief, Investigations and Hearings Division, Enforcement Bureau:

On January 25, 2008, the Commission released a Notice of Apparent Liability for Forfeiture, FCC 08-25, in the above captioned proceeding. This Erratum amends the FRN number associated with KTKA-TV in the Attachment by deleting "0013446273" and inserting "0001841766". This Erratum also amends information in the Attachment associated with WQAD-TV by deleting "Local TV Illinois License, LLC, 1717 Dixie Highway, Suite 650, Ft. Wright, KY 41011" and "0016216046" and inserting in their respective places "New York Times Management Services Co., c/o New York Times Co., 229 W. 43<sup>rd</sup> St., New York, NY, 10036-3913" and "0003481587." The corrected information in the Attachment for these stations is as follows:

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Sign and Community of License	Facility ID Nos.	Proposed Forfeiture Amount
Northeast Kansas Broadcast Service, Inc., 2121 S.W. Chelsea Avenue, Topeka, KS 66604	0001841766	200832080043	KTKA-TV Topeka, KS	49397	\$27,500
New York Times Management Services Co. c/o New York Times Co. 229 W. 43 <sup>rd</sup> Street New York, NY 10036-3913	0003481587	200832080041	WQAD-TV Moline, IL	73319	\$27,500

FEDERAL COMMUNICATIONS COMMISSION

Benigno E. Bartolome  
Acting Chief, Investigations and Hearings Division  
Enforcement Bureau